



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
Southwest Region  
601 West Ocean Boulevard, Suite 4200  
Long Beach, California 90802-4213

AUG 31 2004

F/SWR4:RSH

RP 9-2-04

ATTACHMENT II  
ITEM 17

Mr. John Robertus  
Executive Officer  
California Regional Water Quality Control Board  
San Diego Region  
9174 Sky Park Court, Suite 100  
San Diego, CA 92123-4340

Dear Mr. Robertus:

The National Marine Fisheries Service (NOAA Fisheries) has reviewed Tentative Order No. R9-2004-0154 for the renewal of the NPDES permit for the Duke Energy South Bay Power Plant for another five years. NOAA Fisheries is providing comments pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA).

Our primary concern with the renewal of this NPDES permit involves issues associated with the results of studies completed by the applicant. Specifically, these concerns relate to entrainment losses associated with the intake of cooling water and the redistribution of natural turbidity resulting in a significant reduction of eelgrass coverage in San Diego Bay.

While we believe the applicant used appropriate modeling techniques to determine population level impacts from entrainment on the defined source water area, we do not believe these techniques are sensitive enough to detect impacts at a more localized level. In addition, the redistribution of turbidity associated with the discharge of cooling water appears to have resulted in a significant loss of eelgrass vegetated area that would normally exist without the discharge from the power plant.

As a consequence, NOAA Fisheries believes that operation of the South Bay Power Plant is having an adverse impact to Essential Fish Habitat (EFH) for the Coastal Pelagics and the Pacific Groundfish Fishery Management Plans. To mitigate these adverse effects on EFH, NOAA Fisheries offers the following recommendations pursuant to Section 305(b) of the MSFCMA.

#### EFH Conservation Recommendations

1. Within 12 months of the issuance of the renewed permit, the applicant will finalize a mitigation plan to offset operational impacts of the power plant on



marine resources of San Diego Bay.

2. That mitigation plan will be developed with input from staff from the San Diego Regional Water Quality Control Board, NOAA Fisheries, U.S. Fish and Wildlife Service, U.S. Environmental Protection Agency, and California Department of Fish and Game.
3. Acceptable mitigation shall consist of in-kind replacement for the losses caused by operation of the power plant or acceptable implementation of elements of the Comprehensive Conservation Plan relating to the restoration of the South San Diego Bay Unit of the National Wildlife Refuge.

Please be advised that regulations (50 CFR Sections 600.920) to implement the EFH provisions of the MSFCMA require Federal action agencies to provide a written response to this letter within 30 days of its receipt and at least 10 days prior to final approval of the action. A preliminary response is acceptable if final action cannot be completed within 30 days. Their final response must include a description of measures to be required to avoid, mitigate, or offset the adverse impacts of the activity. If their response is inconsistent with our EFH Conservation Recommendations, they must provide an explanation of the reasons for not implementing those recommendations. Although these regulations do not apply to state action agencies, NOAA Fisheries would appreciate a written response from your agency similar to those required by Federal agencies.

Thank you for considering our comments. If you have any questions, please feel free to contact Robert Hoffman at 562-980-4043 or via email at: [bob.hoffman@noaa.gov](mailto:bob.hoffman@noaa.gov)

Sincerely,



Valerie L. Chambers  
Assistant Regional Administrator  
for Habitat Conservation

cc:

CDFG - San Diego (Bill Paznokas)  
USFWS - Carlsbad (Carolyn Lieberman)